IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Crl.Rev.Pet.No. 3801 of 2007()

CRA.142/2005 of ADDL. SESSIONS COURT (ADHOC), THALASSERY
CC.98/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA

.....

REVN. PETITIONER: APPELLANTS/ACCUSED 1 TO 4 & 6

---

1. CHITTAKANDI SHAJI, S/O.ACHUTHAN,
   AGED 33 YEARS, KANDAMKUNNU AMSOM, MAMBRAM.

2. KARAYI VINOD, S/O.PONNAN KUMARAN,
   AGED 40 YEARS, KANDAMKUNNU AMSOM, DESOM.

3. VELLARAMBAN BABU, S/O.KANNAN,
   AGED 40 YEARS, KANDAMKUNNU AMSOM,
   MAMBRAM.

4. VELLARAMBAN RAGHAVAN, S/O.KANNAN,
   AGED 43 YEARS, KANDAMKUNNU AMSOM, MAMBRAM.

5. KOTTAYI PURUSHOTHAMAN,
   S/O.GOVINDAN, AGED 34 YEARS, KANDAMKUNNU AMSOM,
   MAMBARAM.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, KUTHUPARAMBA,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl. R.P. No. 3801 of 2007

* * * * * * * * * * * * * * * * * * * *

Dated: 24-10-2007

ORDER

The revision petitioners who are accused Nos. 1 to 4 and 6 in C.C. No. 98 of 2001 on the file of the J.F.C.M., Kuthuparamba assail the conviction concurrently entered by the courts below for offences punishable under Sections 143, 147, 448 and 427 read with Sec. 149 I.P.C. and the sentence of fine imposed by the lower appellate court in modification of the sentence of imprisonment and fine imposed by the trial court.

2. The case of the prosecution can be summarised as follows:-

On 4-12-2000 at 11 a.m. at Kandamkunnu amsom of Ayithara desom the accused on account of their political enmity towards P.W.1 and others formed themselves into an unlawful assembly the common object of which was committing the offence of rioting armed with deadly weapons and the accused thereby criminally trespassed into the house of P.w.1 and caused damage to the household articles such as tiles, switch board etc. to the tune of Rs. 80,000/- .

3. Altogether 15 persons including the revision petitioners stood trial before the J.f.C.M., Koothuparamba. On the accused pleading not guilty to the charge framed against them by the court below, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 8 witnesses as P.Ws 1 to 8 and got marked 4 documents as Exts.P1 to P4 and 3 material objects as MOs 1 to 3.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate, after trial, as per judgment dated 1-2-2005 acquitted accused Nos. 5 and 7 to 15 but convicted the revision petitioners of the offences referred to above and sentenced them to imprisonment for various periods with direction that the sentences shall run concurrently. Aggrieved by the conviction and sentence, the revision petitioner preferred an Appeal as Crl. Appeal No. 142 of 2005 before the Sessions Court, Thalassery. As per judgment dated 17-09-2007, the Addl. Sessions Court, Thalassery confirmed the conviction but altered the sentence into one of fine only. It is the said judgment which is assailed in this Revision.

6. The learned counsel appearing for the revision petitioners assailed the conviction on various grounds . He submitted that P.W.2 the husband of the de facto complainant has only identified A1 and one Sasi against whom alone he wanted a complaint to be lodged, that P.W.3 the daughter of PWs 1 and 2 although mentioned the names of A1 to A4, and A6 and A15 she did not implicate the others nor did she speak about the overt acts of each and every accused persons and P.W.4 also did not identify the assailants. The courts below have after a careful evaluation of the oral and documentary evidence come to the

conclusion that out of the 15 accused who stood trial the prosecution witnesses have correctly identified A1 to A4 and A6. The conclusion reached by the courts below on an appraisal of the oral and documentary evidence does not appear to be faulty or unsustainable. In the absence of any infirmity in the appreciation of evidence by the courts below, this Court sitting in revision will be loathe to interfere with the said conviction. The conviction recorded against the revision petitioners are accordingly confirmed.

7. The sentence imposed on the revision petitioners also cannot be said to be disproportionately harsh or excessive. If at all the lower appellate court has erred it was on the side of extreme leniency in not awarding a sentence of imprisonment. I therefore, do not find any justification to interfere with the sentence of fine only.

8. The revision petitioners shall deposit the fine within two months from today failing which the defaulting accused shall suffer the default sentence as imposed by the lower appellate court. From out of the fine amount, a sum of Rs. 15,000/- in equal shares shall be paid to P.Ws 1 and 2 towards the damage sustained by them.

In the result, this revision is dismissed confirming the conviction entered and the sentence passed by the court below.

V.Ramkumar, Judge,